

## AUTOMOBILE ADVERTISING GUIDELINES IN THE STATE OF NORTH DAKOTA

N.D.C.C. ch. 51-15 prohibits the use of deceptive acts or practices, fraud, false pretenses, false promises, or misrepresentations, with the intent that others rely thereon in connection with the sale or advertisement of any merchandise. Violators of this law are subject to injunctive relief and civil penalties of not more than \$5,000 for each violation. This statute applies to all advertising including newspaper, radio, television, window sticker, and statements made by a salesman to a customer.

N.D.C.C. ch. 51-12 also prohibits false advertising. It is a class B misdemeanor for a person to engage in false advertising in violation of certain sections of the chapter.

The following is a list of some of the more common practices that the Attorney General's Consumer Fraud Division considers misleading and deceptive. These guidelines are not rules or regulations promulgated under the North Dakota Administrative Agencies Practice Act and do not have the force of law.

The guidelines are not intended to be a comprehensive listing of all conceivable deceptive practices. Neither is it intended that literal compliance with these guidelines be an absolute protection against civil or criminal prosecution for violation of the consumer fraud and false advertising statutes. In order to be in compliance with state law, dealerships must review their advertisements and sales practices to determine whether the overall impression as well as any specific statement has the capacity to mislead or deceive a reasonable consumer.

### 1. Discounts

- a. It is deceptive for a dealer to raise the price of a new or used vehicle, lower it a short time later, and then advertise a discount or savings based upon the difference between the increased price and the new price.
- b. Discount claims on new vehicles should normally be made in reference to the manufacturer's suggested retail price. If a dealership uses any price other than the manufacturer's suggested retail price, it must clearly disclose which price is being discounted.

### 2. Below Market Finance Charges

- a. Deceptive annual percentage rate advertising can occur when a dealership "buys down" the finance rate. Dealerships that advertise below market finance rates in which the dealership has "bought down" the interest rate should disclose in the advertisement that "dealer participation may affect the final price of the vehicle."
- b. It is also deceptive to offer below market financing rates without clearly disclosing all of the terms that must be met in order to qualify for the advertised low annual percentage rate.

Comment -- For example, failing to disclose a large down payment or hidden finance charges would be considered deceptive.

3. Hidden Disclosures

All disclosures or disclaimers in advertisements must be clear and conspicuous and in close proximity to the terms they modify.

Comment -- Some dealerships have run misleading advertising by placing important disclosures in small print, inconspicuously buried at the bottom of the advertisement. Each advertisement is evaluated for its overall impression. The public should not have to weigh each word or hunt for the hidden meaning of each statement or inconspicuous disclaimers.

4. Free Gifts

It is deceptive to use the word "free" when describing a gift or other item to be given to a customer who purchases an automobile if the "free" item has a value which has increased the selling price.

Comment -- The use of gift incentive programs is not inherently deceptive as long as the item is not advertised as "free" when in fact the purchase price reflects the value of the gift item. Dealerships should disclose in their advertisements that the "incentive program may affect the final price of the vehicle." Dealers must also comply with the Federal Trade Commission Guide concerning the use of the word "free" (16 C.F.R. § 151.1(g)) which prohibits the advertisement of "free" gifts when the price is negotiated.

5. "Over Invoice"/"Under Invoice" Claims

- a. Advertisements offering vehicles at specified amounts "over invoice" and "under invoice" may be deceptive if the dealership uses either term to mean something other than the total price listed on the actual factory invoice.

Comment -- To the public, a "\$1 over invoice" ad means the dealership will make a profit of \$1 on the sale not including factory rebates, holdbacks, or dealer incentives, if any, which may be paid to the dealer by the manufacturer.

- b. It is deceptive to advertise a vehicle at a certain amount "over invoice" or "under invoice" and then charge or attempt to charge more than the dealer's actual cost for any dealer added options already installed on the vehicle, unless the advertisement clearly states that the price is "over invoice" or "under invoice" plus dealer added options.

6. Guaranteed Trade-ins

It is deceptive to advertise and give guaranteed minimum trade-ins if the dealership raises the price of a vehicle prior to a sale in order to compensate for the allowance of the guaranteed trade-in.

Comment -- Because the price of the vehicle to be purchased is increased to compensate for the guaranteed trade-in the trade-in claim is deceptive. Dealers who advertise a guaranteed trade-in, commonly known as "push, pull, or drag" sales will be expected to

have sufficient documentation to prove the vehicle's sales price has not been increased to compensate for the guaranteed minimum trade-in.

7. On Approved Credit

It is deceptive for a dealership to advertise a below market finance rate and then have a customer sign a contract with a higher finance rate, unless the advertisement identifies the specific terms of the loan program under which the low rate is offered.

Comment -- Nothing in this section prohibits the offering of cash rebates as an alternative to a low interest rate.

8. Credit Advertising

Federal Regulation Z controls credit advertising. The following are trigger terms that require certain disclosures to also be made in the advertisement.

- A. The amount or percentage of any down payment.
- B. The number of payments or period of payments.
- C. The amount of any payment.
- D. The amount of any finance charge.

If any one of the trigger terms appear, the dealership must disclose:

- 1. The amount or percentage of the down payment.
- 2. The terms of repayment.
- 3. The annual percentage rate.

9. Advertised Prices Available to All

It is deceptive for a dealership to sell a vehicle to a customer for more than the advertised price. Advertised vehicles must be sold at or below the advertised price regardless of whether or not the advertised price has been actually communicated to the purchaser prior to the sale. The actual sale price must appear on the sales order signed by the customer.

10. Price Plus Dealer Added Options

It is deceptive to advertise the total price of a vehicle without including all costs to the purchaser at the time of sale, except motor vehicle excise tax, and vehicle registration fee. The cost of additional options or services requested by the purchaser may also be added at the time of the sale to the purchase price.

11. Advertised Automobile Availability

- a. When a dealership advertises a specific vehicle for sale that is not readily available it is deceptive to fail to disclose the vehicle's lack of availability.
- b. It is also deceptive for a dealership's employees to advise prospective customers in telephone conversations that an advertised vehicle is still available when the vehicle has already been sold.
- c. When a dealership advertises a special price the dealership should disclose the number of vehicles on hand for the sale.

12. No Down Payment

It is deceptive for a dealership to advertise that no down payment is required in connection with the purchase of a vehicle when a down payment is in fact required and the customer is advised or induced to finance the down payment by a loan or make the down payment in cash.

13. Contract Additions Without Customer's Knowledge

It is deceptive for a dealership to negotiate the terms of a sale and then add the cost of such items as extended warranty, credit life, dealer preparation, undercoating, etc., to the contract without the customer's prior knowledge and consent.

14. Extended Warranties

It is deceptive to misrepresent the terms or conditions of an extended warranty.

Comment -- The terms of an extended warranty should be fully explained so the customer completely understands the scope of the coverage. For example, it is deceptive to describe the scope of the extended warranty as coextensive with that of the manufacturer's warranty except for a longer term, if that is not true.

15. Contracts Subject to Financing

When a customer purchases a vehicle and the dealership knows that the customer intends to obtain financing, the dealership must promptly return all consideration it received if the customer is unable to obtain such financing.

16. Use of Initials or Abbreviations

All initials or abbreviations used in the advertisement of an automobile, including the window sticker and supplementary sticker, must be clearly defined in the advertisement or window sticker, i.e., W.A.C. means With Approved Credit, A.D.P. means Added Dealer Profit, A.D.M. means Added Dealer Mark-up, etc.

17. Supplemental Sticker Prices

- a. When a dealership is selling a vehicle for which a federal Monroney window sticker is required pursuant to 15 U.S.C. § 1232, it is deceptive to charge or attempt to charge a customer more than the manufacturer's suggested retail price unless the dealer's asking price or supplemental price is clearly and conspicuously disclosed on a supplemental sticker adjacent to the Monroney sticker.
- b. It is deceptive for a dealership to misrepresent the reasons for additional charges listed on a supplemental sticker.

Comment -- For example, it is misleading for a dealership to list on a supplemental sticker a charge for shipping or delivery when the dealership did not incur such expense.

- c. It is deceptive for a dealership to charge more for dealer added services or options than the dealership's regular prices.

Comment -- For example, if a dealership routinely charges \$75 for undercoating, the dealership cannot list \$150 as the charge for undercoating on the supplemental sticker in an attempt to disguise added dealer profit or added dealer markup.

18. Lease Advertising

The following are trigger terms that require certain disclosures to be made in the advertisement.

- A. The amount of any lease payment.
- B. The number of required lease payments.
- C. A statement that any or no down payment, or other payment, is required at the beginning of the lease.

If any one of the trigger terms appear, the dealership must include the following disclosures:

- 1. A statement that the transaction advertised is a lease.
- 2. The total amount of any payment (such as security deposit or capitalized cost reduction) required at the beginning of the lease, or a statement that no such payment is required.
- 3. The number, amounts, due dates, or periods of scheduled payments, and the total of such payments under the lease.
- 4. A statement of whether the customer has the option to purchase the vehicle and at what time and price. The method of determining the price may be substituted for disclosure of the price.

5. A statement of the amount (or method of determining the amount) of any liabilities the lease imposes upon the customer at the end of the term. If the customer has such liability, a statement that the customer shall be liable for any difference between the estimated value of the vehicle and its realized value at the end of the lease term. Realized value means (i) the price received by the lessor when the vehicle is sold, (ii) the highest offer for sale, or (iii) the fair market value of the vehicle at the end of the lease term.

#### Sample Disclosures

The following are two examples setting out the required disclosures for a consumer lease advertisement. The disclosures must be printed clearly and conspicuously:

#### Sample A:

48 month lease. No payment at the beginning of the lease, 48 monthly payments of \$199.75 totaling \$9,588. Customer has no option to purchase at the end of the lease. Customer will have no further liability unless auto has depreciated to less than 40% of its new car price. If so, customer is liable for that additional depreciation.

#### Sample B

##### LEASE A 1988 VEHICLE

#### ARITHMETIC:

Monthly Lease Payment	\$ 199.75
Number of Months	48
Refundable Security Deposit	\$ 200.00
Cash Down Payment	\$ 600.00
Total Cash Due at Lease	
Inception	\$ 999.75
Total Amount of Payments	\$9,588.00
Total Mileage Allowed	60,000
Mileage Charge Over 60,000	\$.06/mile

#### THE TERMS:

Customer has the option to purchase the car at lease end at a price of \$3,200.

Customer will have no further liability unless auto price has depreciated to less than 40% of its new car price. If so, customer is liable for that additional depreciation.